

REMARKS

The Examiner's Office Action mailed July 29, 2009, which rejected all pending claims, has been reviewed. Reconsideration in view of the foregoing remarks is respectfully requested. Moreover, Applicants have reviewed the Office Action of July 29, 2009, and submit that the following Remarks are responsive to all points raised therein. Applicants believe that currently pending claims 8-12 are now in form for allowance.

Status of Claims

Claims 8-12 are pending in the application. No new matter has been added.

Examiner Interview

Applicants would like to thank the Examiner for granting an Examiner interview on August 13, 2009. The participants were Examiner Levy and Jessica Monachello, attorney of record. During the interview, clarification was requested of the 112 rejection and the 102(e) rejection over Arther. Examiner asked that Applicants point to where in the specification applicants have support for combination of organic acid, permethrin, imidacloprid, and N-methyl pyrrolidone. Examiner stated that Applicants should further investigate how to overcome the 102(e) rejection. No agreement was reached regarding the claims.

Rejection of claims 8-12 under 35 USC § 112

Reconsideration is requested of the rejection of claims 8-12 under 35 USC 112, first paragraph, as failing to comply with the written description requirement.

The Examiner states that there is no support for any organic acid with permethrin/imidacloprid/N-methyl pyrrolidone.

Applicants respectfully direct the Examiner's attention to Examples 1-18 and page 12, lines 18-25 of the specification, providing support for organic acids in combination with permethrin/imidacloprid/N-methyl pyrrolidone.

As such, Applicants respectfully request withdrawal of the present rejection.

Rejection of Claims 8-12 under 35 USC § 102(e)

Reconsideration is requested of the rejection of claims 8-12 under §102(e) as being unpatentable over Arther (US Patent Publication No. 20020103233).

When a prior U.S. patent application publication is not a statutory bar, a 35 USC 102(e) rejection can be overcome by antedating the filing of the reference by submitting an affidavit or declaration under 37 CFR 1.131.¹

Applicants have attached a declaration by Dr. Kirkor Sirinyan and lab notebook showing that Dr. Sirinyan antedates the filing date of US Patent Application No. 09/727,117 (US Patent Publication No. 20020103233) by Dr. Robert Arther. From this declaration it is clear that Dr. Sirinyan conceived of the present invention and reduced it to practice prior to the filing date of US Patent Application No. 09/727,117 (US Patent Publication No. 20020103233).

For all the reasons stated above, Arther does not anticipate claim 8. Claims 9-12 depend directly or indirectly from claim 8 and as such are patentable over Arther.

¹ MPEP 2136.05.

Conclusion

In view of the above, Applicants respectfully submit that the pending claims are novel and not obvious over the cited reference and request withdrawal of all rejections and allowance of the claims.

The Commissioner is hereby authorized to charge any fee deficiency or credit any overpayment in connection with this amendment to Deposit Account No. 50-4260.

Respectfully submitted,
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